



California Fair Political Practices Commission

March 9, 1988

Charles Davis
Photojournalist
16302 Wildfire Circle
Huntington Harbour
Huntington Beach, CA 92649

Re: Your Request for Advice
Our File No. 88-099

Dear Mr. Davis:

You have asked for advice concerning the duties of Councilmember John Erskine under the conflict of interest provisions of the Political Reform Act.^{1/}

The Commission's Legal Division does provide written advice to persons with questions about their duties under the Political Reform Act. (Section 83114(b).) We do not provide advice to third parties about another person's duties unless the third party has been authorized to request advice by the person whose duties are in question. (Regulation 18329(b)(8)(B).) Therefore, we cannot provide advice on the question you have raised. However, I have referred your letter to our Enforcement Division for review. If you have any questions, that division can be reached at (916) 322-6441.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths", is written over the typed name.

Diane M. Griffiths
General Counsel

DMG:plh
cc: Roger Brown

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Active Member



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Published In:
Fishing & Hunting News
Seal Magazine
Angler Magazine
IGFA Newsletter
Lunker Gazette
The Book "Hook Up"
Western Outdoor News
Fishing Tackle Trade News
Saltwater Sportsman

March 5, 1988

To: Margarita Altamirano
State Of California Fair Political Practices Commission
P.O.Box 807
Sacramento, Ca. 95804

Dear Ms. Altamirano:

Thank you for the information sent to me regarding your commission, and interpretations of the statutes under which you render decisions.

After a great deal of reading, I have come to the conclusion that a conflict of interest, as defined by your statutes and decisions, does, indeed, exist in Huntington Beach, with City Councilman/Mayor John Erskine voting on controversial development projects.

This conflict is apparent because Mayor Erskine is the Orange County Division, Director of the California Building Industry Association, (B.I.A.), and as such, derives his primary income from that job. Mr. Erskine chairs meetings, limits debate, and very obviously favors builders and developers, as opposed to those who favor limited expansion and growth. The City Council has before it, S.B.1517, Bergeson, and we are told that the legislators in Sacramento will not vote favorably on the bill, without approval of the City of Huntington Beach. Mayor Erskine is obviously PUSHING for such council approval.

Further, the B.I.A. has just filed suit to prevent a slow growth initiative from being placed on the upcoming election ballot. This attempt to thwart the initiative process is just one more example of the influence of the B.I.A. The B.I.A. stands to derive great benefit from S.B.1517, which would create a taxation district, and allow the developers, Signal Landmark, to build 5700 homes, plus a great many more buildings to house the support facilities for a proposed marina, hotel, shopping center complex.

It is not supportable, in my estimation, that the executive director of the B.I.A., Orange County, can be unbiased, and I accuse him of conflict of interest, and ask that your Commission render an opinion in this matter. The only opinion, thus far, has come from the City Attorney's office, and I suspect that the fox may be guarding the henhouse. I have enclosed a copy of that decision. Please note that a suggestion was made to obtain a decision from your commission.

Very Truly Yours *Charles Davis* Charles Davis

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CITY OF HUNTINGTON BEACH
INTER-DEPARTMENT COMMUNICATION

*Conflict of Interest
87-040*

To JOHN ERSKINE
City Councilman

From GAIL HUTTON
City Attorney

Subject Conflicts of Interest

Date January 19, 1987

As you requested we have reviewed conflicts issues relating to your BIA employment and have spoken to the Fair Political Practices Commission. It does not appear that the mere fact that an applicant for an entitlement is a member of the BIA would require your disqualification as an official. Our analysis follows; however, we urge you to obtain a review of the issue by the FPFC. Good faith reliance on written advice and opinions of the FPFC is a defense to enforcement proceedings. (Government Code §83114)

FACTS:

You are executive director of the Building Industry Association of Southern California, Inc. (BIA), Orange County Region. The BIA is a 700 member trade association with builder and associate members. The BIA is the local affiliate of the National Association of Homebuilders. A five member executive board sets your salary and supervises you, and none of the members of this board are residents in the city.

ANALYSIS:

An official is disqualified if it is reasonably foreseeable that a decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or his family or on:

- a) A business entity in which the official has an investment worth \$1,000.
- b) Any real property in which the official has an interest worth \$1,000.
- c) Any source of income of \$250 in the preceding 12 months.
- d) A business entity of which the official is an officer or employee.
- e) A donor of gifts of \$250 or more in the preceding 12 months.

Campaign Contributions ??

See attached §87103 for the full text of the above synopsis.

You would be disqualified on any matter that would have a material financial effect on the BIA, since it is a source of income (c) and you are an employee (d).

As a general proposition, an individual member of the BIA is not a source of income to you merely by virtue of membership in the organization. You are employed by the BIA as an entity, not by its individual members. Thus, if a BIA member has a development application before the Council, you are not disqualified unless there is some other basis for disqualification.

CAVEATS:

If a decision will have a material financial effect on a parent, subsidiary, or related business entity to the BIA, you are disqualified. (Reg 513706).

If there is a nexus between a decision and the purpose of the BIA, there may be a conflict. For example, if the BIA has a policy supporting zoning, you may have a problem in zone changes. (Reg 513703 (c) (3)).

If a decision has a material financial effect on a source of income to the BIA, there may be a conflict.

This is an oversimplification of complex issues that are best addressed in a specific factual context. We will be pleased to apply these principles to actual issues.

As noted we also suggest an FPPC opinion.

As noted, we also suggest an FPPC opinion.

GAIL HUTTON
City Attorney

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Foes of Slow-Growth Initiative Sue in Bid to Keep Measure Off June County Ballot

By MICHAEL FLAGG and JEFFREY A. PERLMAN,
Times Staff Writers

The Building Industry Assn. of Southern California, the Orange County Chamber of Commerce and the Commercial Industrial Development Assn. launched a court battle Thursday aimed at keeping the countywide slow-growth initiative off the June ballot.

Superior Court Judge John C. Woolley scheduled a hearing for March 23, about a week before the county is to begin printing ballots for the June 7 primary.

The initiative, called the Citizens' Sensible Growth and Traffic Control Initiative, would link new development with acceptable levels of traffic and public services. It would require developers to improve or build roads to meet those levels.

The lawsuit filed Thursday contends that the initiative is too broad, unworkable and imposes unrealistic burdens on builders and developers.

'Stop All Growth'

"This provision would undoubtedly stop all growth because the cost of improving public facilities to achieve compliance . . . is beyond the means of any developer," said Don Steffenson, president of the Building Industry Assn. (BIA).

Tom Rogers, co-founder of Orange County Tomorrow, the group that drafted the slow-growth initiative, said, "Once again, it's a despicable attempt on the part of the special interests to interfere

with the people's right to vote."

Rogers recalled that County Counsel Adrian Kuyper concluded in a memo to the Board of Supervisors last year that the measure would probably survive court challenges, despite its wording.

Placed on Ballot

Faced with about 96,000 signatures on petitions calling for the initiative to be put to a countywide vote, the Board of Supervisors voted unanimously Tuesday to place the measure on the June ballot. A legal challenge by builders has long been expected.

The measure now has overwhelming public support, according to recent polls, as county residents become increasingly frustrated with choked freeways and streets.

The suit was filed after months of intermittent, unsuccessful negotiations between developers and initiative supporters.

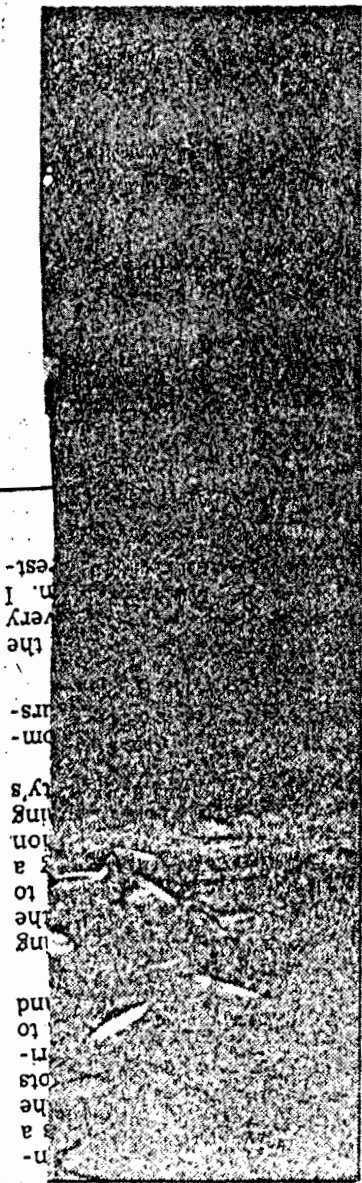
BIA's officials refused to speculate about the political impact of the lawsuit.

Even some opponents of the initiative have said the lawsuit could backfire by arousing voters if it finally makes the ballot despite court challenges.

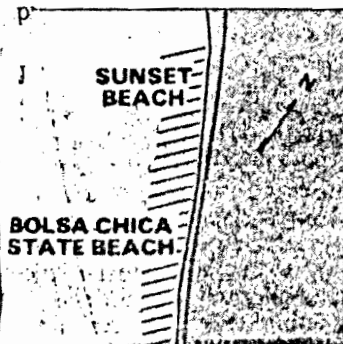
A key argument in the suit is that the initiative conflicts with regional and state goals for housing and transportation.

By halting growth, the oppo-

Please see BIA, Page 4



THOMAS KELSEY / Los Angeles Times
oregory of a snipe hunt.



BIA: Initiative Foes File Suit

Continued from Page 3

neers argue, the county would actually increase traffic congestion by shutting off a big source of money for new roads: fees charged developers on their construction projects.

They also argue that—as housing became scarcer for the county's burgeoning population—the poor would be excluded by high housing prices. That runs counter to state housing policy, the business groups contend.

Inequitable Solution

The initiative "attempts a parochial and inequitable solution" to problems of growth, the opposing groups said in the suit.

That argument worked for the building industry in an earlier suit against Irvine. A judge barred an initiative from the ballot that would have effectively stopped construction of freeways through that city. The courts said the freeways would benefit the entire region and shouldn't be held up by one city. That case is now before the state Supreme Court.

The suit also challenges the slow-growth initiative on several other broad legal grounds. It contends that the initiative unfairly penalizes developers of new homes and buildings for problems caused by earlier construction.

The initiative "makes future development the scapegoat for existing problems, even though future development admittedly is not responsible for such problems," according to the suit.

And the initiative is so broad that supervisors would have to enact a law to implement it, the suit contends, which would be unlawful because "initiatives can only enact legislation, not direct a legislative body to do so."

California courts have generally been reluctant to interfere with the initiative process, preferring to wait until the public votes on an initiative before hearing arguments against it.

With some exceptions, the general principle is that the courts have hesitated to invalidate a measure before the people have had their say," said Fredric Woocher, a lawyer representing a group of supporters of the Irvine initiative.

"It's a waste of judicial resources if it doesn't pass, but more importantly, they're [judges are] just reluctant to interfere with the vote."

But that judicial attitude is changing, said Alvin S. Kaufer, a lawyer hired to represent BIA in the suit filed Thursday. Kaufer's law firm, Nossaman Guthner Knox & Elliott, also represents the association in the Irvine suit and has represented builders in other suits against slow-growth initiatives.

"The state Supreme Court has said that if part of an initiative is invalid, it's a fraud on the voters to let them go ahead and vote on it anyway," Kaufer said.

BIA, which represents 2,000 home builders in Southern California, said it didn't know how much the lawsuit would cost. The group earlier established a legal defense fund of at least \$250,000 for such cases.

The suit names Citizens for Sensible Growth and Traffic Control, the group supporting the initiative, as the "real party in interest." In the Irvine case, the city took a neutral stance, so the citizens group has borne the costs of defending the initiative, Kaufer said.

Writ of Mandate Sought

Gregory A. Hile, the lawyer who is treasurer of Citizens for Sensible Growth and Traffic Control, appeared in court Thursday to oppose the lawsuit, which seeks a writ of mandate blocking the registrar of voters from placing the initiative on the June ballot.

Hile never got a chance to state his arguments, however, because the judge merely set a hearing date and gave BIA lawyers permission to exceed the court's 15-page limit on legal briefs in support of their legal motions.

Peter C. Hoffman, the attorney who represented the BIA at Thursday's court session, said he will show that a vote in June would be fruitless. He told Hile that court action could be averted if initiative proponents would agree to change the June election from a binding to an advisory vote.

Hoffman asked Hile to think about that proposal, but Hile immediately replied, "I've thought about it. No, we're not interested."

Rogers agreed later, saying: "The 96,000 signatures filed on

behalf of the initiative was advice enough. We want to change the way the county does business, and an advisory vote will not have any effect on the Board of Supervisors."

Rogers insisted that the BIA should list donors to its legal fund, arguing that contributions by developers to cover legal expenses are in effect political donations that should come under county and state campaign disclosure laws.

Political Considerations

"The lawsuit is based on political considerations," Rogers said. "Its sole purpose is to defeat the initiative."

Assistant Dist. Atty. Michael R. Capizzi said he had never heard such a theory about money used to pay for a lawsuit, but added, "I would certainly want to know all of the details before expressing any opinion."

Hile revealed Thursday that initiative supporters are going to formally incorporate a nonprofit legal fund to defend the initiative, but he said the fund doesn't exist yet.

"I'm confident that we will prevail," Hile said. "I've never believed that we would have any difficulty answering the kinds of arguments the BIA is raising."

Judge Woolley gave Hile and Deputy County Counsel Edward N. Duran until noon March 17 to respond in writing to what was filed Thursday.

Duran said he believes the county registrar of voters, named as a defendant, won't care about the outcome in court as long as ballots are printed on time. Ballot materials are scheduled to be shipped to the printer between April 1 and April 4.

But Duran, who is also defending the Board of Supervisors in the action, said he would have to consult board members during a closed-door executive session scheduled for Tuesday morning before commenting on the county's official legal stance in the case.

Supervisors either declined comment or were unavailable Thursday.

Woolley had this to say from the bench: "I think you have a very interesting issue, gentleman. I think this is going to be an interesting case."